

REMARKS

Claims 1-7, 9, 10, 12-14, 17, 18, 20-25 and 29, as amended are pending and under active consideration. As noted below, the amendments that were made were simply to combine exiting claims and modify grammar so that there is no issue of new matter. A listing of the detailed claim amendments appears in appendix A. The entry of these amendments is requested and warranted. Accordingly, a complete copy of all pending claims appears in Appendix B.

Applicants acknowledge, with appreciation, the allowance of claim 29 and the indication of allowable subject matter in claims 2-5, 8, 10-12, 19-24 and 28. Claims 2 and 3 are in independent form and are believed to be in condition for allowance. Claims 7 and 8, 9 and 11, and 13 and 19, respectively, have been combined to place claims 7, 9 and 13 in condition for allowance. Claims 8, 11, 15, 19 and 26-28 have been cancelled as the subject matter of these claims has been combined into other claims by the preceding amendments.

Claims 1, 6, 7, 9, 12, 25 and 26 were rejected as being anticipated were rejected under 35 U.S.C. §§ 102(b) by Krawczyk. This rejection is no longer applicable to claim 7, 9, 12, or 25 due to the amendments made above to claims 7 and 9. As claim 1 has been rejected based on the recitation of a sorbitan ester, the deletion of this emulsifier renders the claim patentable over Krawczyk. As previously explained, Krawczyk is directed to a reduced calorie confection using a cellulose surfactant. The cellulose surfactant taught by Krawczyk comprises microcrystalline cellulose/sorbitan monostearate composite, but it does not disclose, teach or suggest the emulsifiers that are presently recited. Thus, the rejection based on Krawczyk should be withdrawn.

Claims 13-15, 17 and 27 were rejected under 35 U.S.C. §§ 102(b) as being anticipated by Varvil as evidenced by Gunstone for the reasons of record. The amendment of claim 13 to incorporate the recitations of claim 19 now obviates this rejection.

In view of the comments and amendments above, applicants submit that the entire application is now in condition for allowance. If any issues remain in connection herewith, Applicant kindly request that the Examiner telephone the undersigned.

No fees are believed to be due for the filing of this amendment. Should any fees be required, please charge such fees to Winston & Strawn Deposit Account No. 501-814.

Date: 11/30/03

Respectfully submitted,

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APPENDIX A - MARKED COPY OF AMENDED CLAIMS

1. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, [sorbitan esters,] mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

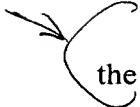
7. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the chocolate composition substantially maintains its structure up to a temperature of at least about [36°C] 45°C.

9. (Amended) A method of manufacturing a chocolate composition that maintains its structure at elevated temperatures comprising:

combining the ingredients to make a chocolate;

adding to the chocolate an emulsifier component comprising at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides or sugar esters, the emulsifier composition having a melting point from about 50°to 90°C and hydrophilic lipophilic balance value of about 2 to 10 and being added in an amount from about 1 to 6 percent by weight of the chocolate composition;

mixing the chocolate and emulsifier component to sufficiently distribute the emulsifier component throughout the chocolate and provide a chocolate composition that is a mixture of chocolate and emulsifier component;

warming the chocolate composition to a temperature sufficient to inhibit or prevent the emulsifier component from crystallizing; and

allowing the mixture to cool and set to form a stable chocolate composition.

13. (Amended) A food product comprising a liquid oil and an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value of about 2 to 10, wherein the liquid oil is present in an amount of about 10 to 60 weight percent

of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil, and wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglyceride, a sorbitan ester, a mono- [and] or diglyceride[s] of a vegetable oil[s], a partially hydrogenated monoglyceride, a fully hydrogenated monoglyceride or a sugar ester, wherein the food product comprises at least one of a creamer, dough, bouillon base, confectionery coating or center, or ice cream.

APPENDIX B - PRESENTLY PENDING CLAIMS

1. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

2. A chocolate composition comprising an emulsifier component comprising a monoglyceride, a diglyceride, a sorbitan ester or a sugar ester, the emulsifier having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component is present in an amount of about 2.2 to 6 percent by weight of the confectionery product

3. A chocolate composition comprising an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, or fully hydrogenated monoglycerides.

4. The chocolate composition of claim 3, wherein the emulsifier component is a monoglyceride having a carbon side chain of at least 16 carbons.

5. The chocolate composition of claim 4, wherein the emulsifier component comprises a monoglyceride having a carbon side chain at least 20 carbons long.

6. The chocolate composition of claim 1, wherein the emulsifier component comprises a monoglyceride having a melting point of about 67°C obtained by distilling partially hydrolyzed vegetable oil.

7. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about

2 to 10, wherein the chocolate composition substantially maintains its structure up to a temperature of at least about 45°C.

8. (cancelled)

9. (Amended) A method of manufacturing a chocolate composition that maintains its structure at elevated temperatures comprising:

combining the ingredients to make a chocolate;

adding to the chocolate an emulsifier component comprising at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides or sugar esters, the emulsifier composition having a melting point from about 50° to 90°C and hydrophilic lipophilic balance value of about 2 to 10 and being added in an amount from about 1 to 6 percent by weight of the chocolate composition;

mixing the chocolate and emulsifier component to sufficiently distribute the emulsifier component throughout the chocolate and provide a chocolate composition that is a mixture of chocolate and emulsifier component;

warming the chocolate composition to a temperature sufficient to inhibit or prevent the emulsifier component from crystallizing; and

allowing the mixture to cool and set to form a stable chocolate composition.

10. The method of claim 9, further comprising depositing the mixture into a mold at a temperature sufficient to prevent the emulsifier component from crystallizing, and removing the mixture from the mold after the mixture cools.

11. (cancelled)

12. The method of claim 9, wherein the mixing uniformly distributes the emulsifier component throughout the chocolate.

13. (Amended) A food product comprising a liquid oil and an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value of

about 2 to 10, wherein the liquid oil is present in an amount of about 10 to 60 weight percent of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil, and wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglyceride, a sorbitan ester, a mono- or diglyceride of a vegetable oil, a partially hydrogenated monoglyceride, a fully hydrogenated monoglyceride or a sugar ester, wherein the food product comprises at least one of a creamer, dough, bouillon base, confectionery coating or center, or ice cream.

14. The food product of claim 13, wherein the liquid oil comprises palm oil, palm kernel oil, coconut oil, cocoa butter, babassu oil, milk fat, soybean oil, corn oil, canola oil, rapeseed oil, sesame oil, sunflower oil, safflower oil, peanut oil, oils resulting from the fractionation or hydrogenation thereof, and mixtures thereof.

15. (Cancelled)

16. (Cancelled)

17. (Amended) The food product of claim 13, wherein the emulsifier component comprises a monoglyceride having a carbon side chain of at least 16 carbons.

18. (Cancelled)

19. (Cancelled)

20. The chocolate composition of claim 1, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

21. (Cancelled)

22. The chocolate composition of claim 7, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

23. The chocolate composition of claim 2, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

24. The chocolate composition of claim 3, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

25. The chocolate composition of claim 7, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

26. (Cancelled)

27. (Cancelled)

28. (Cancelled)

29. A method of manufacturing a chocolate composition that maintains its structure at elevated temperatures comprising:

combining the ingredients to make a chocolate;

adding to the chocolate an emulsifier component having a melting point from about 50° to 90°C and hydrophilic lipophilic balance value of about 2 to 10 and being added in an amount from about 1 to 6 percent by weight of the chocolate composition;

mixing the chocolate and emulsifier component to sufficiently distribute the emulsifier component throughout the chocolate and provide a chocolate composition that is a mixture of chocolate and emulsifier component;

warming the chocolate composition to a temperature sufficient to inhibit or prevent the emulsifier component from crystallizing; and

allowing the mixture to cool and set to form a stable chocolate composition, wherein the chocolate composition substantially maintains its structure up to a temperature of at least about 36°C.